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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

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In re J.H., a Person Coming Under the  
Juvenile Court Law.

SACRAMENTO COUNTY DEPARTMENT OF HEALTH  
AND HUMAN SERVICES,

Plaintiff and Respondent,

v.

H.H.,

Defendant and Appellant.

C064227

(Super.Ct.No.  
JD225573)

H.H. (appellant), the mother of J.H. (the minor), appeals from the termination of her parental rights. (Welf. & Inst. Code, §§ 366.26, 395; further section references are to the Welfare and Institutions Code[.] Appellant contends the order must be reversed because she established that terminating her parental rights would be detrimental to the minor. We disagree and shall affirm the order.

## FACTS

In March 2007, when the minor was almost two years old, he was removed from parental custody following appellant's arrest for shoplifting. After the minor was returned to appellant's custody, he was detained again in May 2007 due to appellant's substance abuse and inability to adequately care for the minor.

The juvenile court sustained an amended petition (§ 300, subd. (b)) and ordered reunification services for appellant.

After two years of services, appellant failed to reunify with the minor. Thus, in April 2009, the juvenile court terminated such services, ordered an attachment assessment, and set a hearing to select a permanent plan pursuant to section 366.26.

The report for the section 366.26 hearing stated that appellant had consistent contact with the minor in supervised visits but her parenting was inconsistent and the minor was occasionally defiant with appellant. Although the minor appeared to be eager to visit with appellant and enjoyed the visitation, he expressed anger and aggression after visits. Then four years old, the minor was in good health and was on target developmentally. He had no serious behavioral problems and appeared to be bonded to his caregiver, who wanted to adopt him.

An addendum report included the results of the attachment study, which concluded that the minor's bond to appellant was relatively weak and not sufficiently positive to mandate continued contact between them. The study included information from interviews, testing, evaluator observations, and consultations with other service providers. During the observed visit with appellant, the minor did

not interact or speak with her for the first half of the visit but gradually became more responsive. The minor left the visit easily. According to the visit supervisor, appellant was very attentive in visits, but the minor showed affection only when prompted. The visit supervisor stated the interaction between appellant and the minor was more like playmates than a parent and child, and appellant rarely imposed structure or limitations during visits. From the conflicts in the minor's statements and his observed behavior, the evaluators concluded that the minor had ambivalent feelings about appellant and that contact with her was psychologically stressful for him. The evaluators also concluded that appellant had a relatively low level of commitment to the minor and did not make his needs a priority over her own. According to the evaluators, severing the relationship would cause the minor some distress but would not disrupt his functioning on a long-term basis. The minor needed a safe, stable environment and this outweighed any short-term negative consequences of severing the parent-child relationship.

Appellant testified about the quality of her relationship with the minor as shown in her regular visits. Disagreeing with the conclusions of the attachment assessment, she stated the observed visit was atypical of her interaction with the minor.

Finding no compelling reason to maintain parental rights and adopting the recommendations of the Department of Health and Human Services, the juvenile court identified the current caretaker as the prospective adoptive parent, terminated parental rights, and selected adoption as the minor's permanent plan.

## DISCUSSION

Appellant argues the evidence supported a finding that the minor would benefit from continued contact with appellant and that terminating her parental rights would be detrimental to the minor.

At the selection and implementation hearing held pursuant to section 366.26, a juvenile court must choose a permanent plan for the minor. “*The permanent plan preferred by the Legislature is adoption. . . .*” . . . If the court finds the child is adoptable, it *must* terminate parental rights absent circumstances under which it would be detrimental to the child.” (*In re Ronell A.* (1996) 44 Cal.App.4th 1352, 1368; citations omitted.) To avoid termination, the juvenile court must find a “compelling reason for determining that termination [of parental rights] would be detrimental to the child.” (§ 366.26, subd. (c)(1)(B).) The party claiming an exception to termination of parental rights has the burden of establishing the existence of any circumstances which constitutes such an exception. (*In re Cristella C.* (1992) 6 Cal.App.4th 1363, 1373; *In re Melvin A.* (2000) 82 Cal.App.4th 1243, 1252; Cal. Rules of Court, rule 5.725(e)(3); Evid. Code, § 500.)

One of the circumstances in which termination of parental rights would be detrimental to the minor is when a parent has “maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (§ 366.26, subd. (c)(1)(B)(i).) To satisfy this test, the benefit to the child must promote “the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents. . . . If severing the natural parent/child

relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated." (*In re Autumn H.* (1994) 27 Cal.App.4th, 567, 575 (hereafter *Autumn H.*)). Even frequent and loving contact is not sufficient to establish this benefit absent a significant positive emotional attachment between parent and child. (*In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418-1419; *In re Teneka W.* (1995) 37 Cal.App.4th 721, 728-729; *In re Brian B.* (1991) 2 Cal.App.4th 904, 924.)

Here, appellant regularly visited the minor, and the visits were generally pleasant for both. Nevertheless, the minor's bond with appellant was weak. Their relationship was described as that of playmates, and appellant did not exercise parental control by establishing limits and structure during visits. The minor showed psychological stress following visits, and he looked to the foster mother for parental care. The minor also expressed ambivalence about his relationship and ongoing contact with appellant. Thus, the attachment assessment concluded that severing the parent-child relationship would, at most, create short-term distress which would be outweighed by the long-term stability adoption would provide.

Based on this evidence, the juvenile court reasonably could find that the minor did not have a significant positive attachment to appellant and would not suffer detriment if the attachment were severed. Thus, the court did not err in terminating appellant's parental rights.

Appellant disagrees and urges us to apply a different standard than the one in *Autumn H.*, *supra*, 27 Cal.App.4th at page 575. In her view, the *Autumn H.* standard is "a complicated test so difficult to meet that failing reunification is enough to guarantee a finding that there is no beneficial parental relationship." We are not persuaded. The weighing process set forth in *Autumn H.* is a common sense way to assess whether a minor's continued contact with his or her parent will so "benefit" the child within the meaning of section 366.26, subdivision (c)(1)(B)(i) that termination of parental rights to permit the preferred plan of adoption should not apply. The balancing process necessarily exposes a dichotomy in the differing needs of younger and older children. Very young children are less likely to benefit from continued contact with a parent when the bond lacks parental qualities so essential to the stable homes young children need to develop and prosper. Older children who have had the opportunity to form more complex bonds with a parental figure are more likely to benefit from continued contact, even if the bond lacks some parental qualities, because the child may have less need for a secure adoptive family and instead be able to flourish in a safe and consistent foster home where development may even be enhanced by ongoing parental contact.

Citing several studies, appellant argues "a comparison of a parental relationship to the perceived benefits of adoption and permanence is not possible because the actual benefits of adoption versus maintaining a relationship with the natural parents is, in the end, unknowable." However, the Legislature has found that, when a parent whose conduct has resulted in a minor being adjudicated a

dependent child of the court has failed to reunify with the child, the preferred permanent plan is adoption unless the parent can establish that the benefit the child would obtain from a continuing relationship with the parent is a compelling reason to not terminate parental rights. To the extent there may be some uncertainty in some cases as to whether the benefits of adoption and permanence outweigh the benefit of maintaining the parent/child relationship does not establish that the statutory scheme is flawed. It simply reflects the fact of life that, in any aspect of life, certainty is rarely knowable. No system of law could operate if certainty were required for every decision.

DISPOSITION

The order terminating appellant's parental rights is affirmed.

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SCOTLAND, P. J.

We concur:

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RAYE, J.

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HULL, J.